

EXHIBIT “D”

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September 15, 1999

Via Certified Mail - Return Receipt Requested

Mr. Harry Fishel
Plant Manager
W. R. Grace & Company
213 Kaolin Road
Aiken, SC 29801

FILE COPY

RE: Lester F. Kirkland, Jr. vs. Norfolk Southern Railway Company;
State Court of Bibb County, C/A No. 45273

Dear Mr. Fishel:

This firm represents Norfolk Southern Railway Company and I am writing to you with reference to the above-identified lawsuit which has been filed by Plaintiff Lester Kirkland against Norfolk Southern, a copy of which is enclosed herewith for your ready reference.

As you will note from Plaintiff's allegations of fact in the Complaint, he alleges that on two occasions he slipped from a slick and dangerous substance which covered the rail car on which he was working and he fell and injured his neck and back. At his deposition, Plaintiff testified that the cars he was working on were loaded with kaolin by Grace employees at the W. R. Grace plant. He testified that the cars were overloaded and the kaolin spilled out all over the cars, however, W. R. Grace & Company did not blow off the cars or otherwise clean them as they are supposed to do and, that the presence of the excess kaolin overspill caused him to slip.

The agreement of December 15, 1980 between Southern Railway Company, Norfolk Southern's successor, and W. R. Grace & Company, provided in Section 10(b) that W. R. Grace & Company "shall be solely responsible, and shall bear all costs, expense and liability resulting from...personal injury...caused solely by the negligence of Licensee [W. R. Grace & Company]...or by a violation by licensee or its agents or employees of the terms of this agreement....".

Section 18 of this agreement provides that "Licensee [W. R. Grace & Company] will maintain said Facility at all times during the life of this agreement in such condition that said Facility or the use thereof by licensee shall not be or become an obstruction to, or interference with, the safe and proper maintenance of said industrial track, or railroad operations upon said

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track, or endanger life or limb of employees of Company or other persons on or about said track."

A full copy of the December 15, 1980 agreement is also enclosed herewith for your ready reference.

In view of the facts as alleged by Plaintiff in his Complaint and more fully developed upon his deposition, it seems clear that the proximate cause of Plaintiff's injury was the act of W. R. Grace & Company's employees in overfilling the kaolin cars and their failure to remove the overfill kaolin from the platform on the cars where the railroad employees have to walk.

I am therefore writing to request that W. R. Grace & Company assume the defense of this action and accept the responsibility for handling, settling or otherwise handling this lawsuit pursuant to the terms of the December 15, 1980 indemnity agreement.

If you or your counsel have additional questions with reference to this matter, please advise.

Thanking you, I am

Sincerely,

Hall, Bloch, Garland & Meyer

By:

Benjamin M. Garland

BMG/sj
Enclosures

cc: M. S. Block
R. A. Wells
T. D. Barton
J. D. Hollis
KIRKLL012398HR

PERSONAL INJURY REPORT

REPORT DATE: 1-23-98 TRANSPORTATION DEPARTMENT
REPORT TIME (AM) or (240P PM) PIEDMONT DIVISION

Train No. (if applicable) P22PO Is this incident related to a Train or Crossing Accident? [] Yes [X] No

TO: Supervisory Officer: MR. CHAPMAN FROM: Injured Employee: L.E. KIRKLAND JR Employee SS No.: 150-84-2831

INCIDENT DATE: 1-23-98 INCIDENT TIME: (AM) or (140P PM)

LOCATION: Select one: Line of Road ☒ Terminal ☐ Shop or Office Building ☐ Off Railroad Property ☐

INCIDENT CITY: WARRENVILLE STATE: S.C. MILEPOST: (if applicable) R 179.7

WEATHER: Select one: Clear ☐ Cloudy ☐ Rain ☒ Fog ☐ Sleet ☐ Snow ☐ Does Not Apply ☐ (Injury Occurred Indoc

VISIBILITY: Select one: Dawn ☐ Day ☒ Dusk ☐ Dark ☐ Indoors-Dark ☐ Indoors-Dim ☐ Indoors-Normal ☐ Indoors-Other ☐

TEMPERATURE: (58 PLUS) or (MINUS)

HEIGHT: 5 FT. 8 IN. WEIGHT 150 LBS. OCCUPATION CONDUCTOR

REST DAYS: Select all that apply: Monday ☐ Tuesday ☐ Wednesday ☐ Thursday ☐ Friday ☐ Saturday ☒ Sunday ☒ None ☐

ASSIGNMENT: REGULAR ☒ RELIEF ☐ EXTRA ☐

ON DUTY: [X] Yes [] No HOURS ON DUTY AT TIME OF INCIDENT 6'45"

SAFETY ATTIRE WORN: Select all that apply: Head ☐ Eye ☒ Hearing ☒ Respiratory ☐ Foot ☒ Hand ☒ Other ☐ None ☐

WAS ANY TYPE OF EQUIPMENT INVOLVED? [X] Yes [] No STATIONARY ☒ MOVING ☐

EQUIPMENT TYPE: Select one: Freight ☒ Passenger ☐ Mixed ☐ Work ☐ Yard Switching ☐ Light Locomotive ☐ WW Equipment ☐ None ☐

INITIAL AND NUMBER:

ADDRESSES

WITNESS NAMES

DO YOU DESIRE MEDICAL ATTENTION AT THIS TIME? [] Yes [X] No

DESCRIBE WHAT HAPPENED - GIVE SPECIFIC, DETAILED INFORMATION:

While releasing
Handbrake on Covered hopper loaded
with clay, slipped on clay on
hopper and fell to ground.

Distribution: Original to Supervisory Officer
Photocopy to Injured Employee



L.E. Kirkland Jr
SIGNATURE OF EMPLOYEE

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PERSONAL INJURY REPORT

(162612)

REPORT DATE: 1-26-98 TRANSPORTATION DEPARTMENT
 REPORT TIME (AM) or (100 PM) Piedmont DIVISION

Train No. (If applicable) P2220 Is this incident related to a Train or Crossing Accident? [] Yes [X] No

TO: Supervisory TRAINMASTER FROM: Injured L.E. KIRKLAND Employee 250-84
 Officer: MR. CHAPMAN SS No.: 2831

INCIDENT DATE: 1-26-98 INCIDENT TIME: (AM) or (1210P PM)

LOCATION: Select one: Line of Road ✓ Terminal Shop or Office Building Off Railroad Property

INCIDENT CITY: Aiken, S.C. STATE: S.C. MILEPOST: (If applicable) SA 57.3

WEATHER: Select one: Clear ✓ Cloudy Rain Fog Sleet Snow Does Not Apply (Injury Occurred Ind.)

VISIBILITY: Select one: Dawn Day ✓ Dusk Dark Indoors-Dark Indoors-Dim Indoors-Normal Indoors-Other

TEMPERATURE: (45° PLUS) or (MINUS)

HEIGHT: 5 FT. 8 IN. WEIGHT 150 LBS. OCCUPATION Conductor

REST DAYS: Select all that apply: Monday Tuesday Wednesday Thursday Friday Saturday ✓ Sunday ✓ None

ASSIGNMENT: REGULAR ✓ RELIEF EXTRA

ON DUTY: [X] Yes [] No HOURS ON DUTY AT TIME OF INCIDENT 5'10"

SAFETY ATTIRE WORN: Select all that apply: Head Eye ✓ Hearing ✓ Respiratory Foot ✓ Hand ✓ Other None

WAS ANY TYPE OF EQUIPMENT INVOLVED? [X] Yes [] No STATIONARY ✓ MOVING

EQUIPMENT TYPE: Select one: Freight ✓ Passenger Mixed Work Yard Switching Light Locomotive M/W Equipment None

INITIAL AND NUMBER: NS 245061

WITNESS NAMES

ADDRESSES

C. J. Sharpe
T. W. Connelly

2905
1224 Blackville Ct. Gaston, S.C.
3384 Calhoun St. Branchville
S.C. 29432

DO YOU DESIRE MEDICAL ATTENTION AT THIS TIME? [X] Yes [] No

DESCRIBE WHAT HAPPENED - GIVE SPECIFIC, DETAILED INFORMATION:

pulled 7 loads
from W.R. Grace Plant in Aiken, S.C. brought
all 7 loads which were covered in clay back
to Aiken and ran around cars in house track
to take to Warrentonville S.C. to be set off,
while applying handbrakes on cars conductor
slipped on NS 245061 and twisted or
tore or pulled something in lower back,
brakeman C.J. Sharpe saw incident.

Distribution: Original to Supervisory Officer
 Photocopy to Injured Employee



L.E. Kirkland Jr.
 SIGNATURE OF EMPLOYEE

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